



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

April 26, 2004

Ms. Sara Shiplet Waitt  
Senior Associate Commissioner  
Texas Department of Insurance  
P.O. Box 149104  
Austin, Texas 78714-9104

OR2004-3388

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID#199231.

The Texas Department of Insurance (the "department") received two requests for information from the same requestor related to complaints filed against a number of individuals and entities. The second request also seeks information pertaining to disciplinary and enforcement actions by the department against the named individuals and entities. You inform us that some of the requested information is being withheld from disclosure in accordance with previous determinations issued to the department in Open Records Letter Nos. 2001-4777 (2001) (identifying information regarding enrollees in health plans) and 95-1536 (1995) (determining information acquired by the department that is relevant to an inquiry by the insurance fraud unit that the commissioner deems confidential is excepted from disclosure). *See also* Open Records Decision No. 673 at 7-9 (2001) (delineating elements of second type of previous determination under Gov't Code § 552.301(a)).

Additionally, you state that some of the information regarding Robert David Neal was ruled upon by this office in Open Records Letter No. 2000-4653 (2000).<sup>1</sup> In that ruling, the department received a request for all complaints and disciplinary actions that have been taken against Mr. Neal. Therefore, assuming that the documents at issue are precisely the same records that we addressed in Open Records Letter No. 2000-4653 (2000), we conclude that the department may again rely on that letter ruling for information that is confidential under section 552.101 as a previous determination with regard to the request for information

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<sup>1</sup>As you note, in Open Records Letter No. 2001-2804(2001), this office allowed the department to rely on OR2000-4653 as a previous determination with regard to a request for information concerning complaints or disciplinary actions against Mr. Neal.

concerning complaints received by or disciplinary actions taken against Mr. Neal by the department prior to the date of that letter ruling. *See* Open Records Decision No. 673 (2001) (first type of previous determination exists where requested information is precisely same information addressed in prior attorney general ruling, ruling is addressed to same governmental body, ruling concludes that information is or is not excepted from disclosure, and law, facts, and circumstances on which ruling was based have not changed). You claim that the remainder of the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.111, 552.130, 552.136 and 552.137 of the Government Code.

Initially, we address the department's obligations under the Act. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents.

The department received the first request for information on January 23, 2004. On February 6, 2004, in conformity with section 552.301(b), the department submitted its first request for a decision from this office. On February 11, 2004, the department received the second request for information, which included a clarification of the original request and request for additional information.<sup>2</sup> On February 13, 2004, the department submitted a letter to this office in which it purports to withdraw its February 6 request for a ruling. However, the department has not submitted a written withdrawal from the requestor of his January 23

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<sup>2</sup> It does not appear that the department requested clarification from the requestor, and the department has not provided sufficient information for us to determine that the deadlines for requesting a decision from this office should be tolled. *See* Open Records Decision No. 663 (1999) (determining that during interval in which governmental body and requestor communicate in good faith to narrow or clarify request, the Act permits tolling of deadlines imposed by section 552.301).

request and we have no indication, written or oral, that the requestor intended to withdraw this request. Further, portions of the submitted information are clearly responsive to both requests for information (specifically, the information you have labeled "Complaint Files"). As such, the department was required, by February 13, 2004, the fifteenth business day after the department received the first request, to submit written comments stating the reasons why the stated exceptions apply to the complaint files that would allow the information to be withheld and a copy of the specific information requested or representative samples. *See* Gov't Code § 552.301(e). However, the department did not submit its written comments or copies of the information to this office until March 4, 2004. Therefore, the department failed to comply with section 552.301.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You claim that portions of the information contained in the complaint files are excepted from disclosure under sections 552.101, 552.130 and 552.137 of the Government Code. Because those sections present compelling reasons to withhold information, we will consider their applicability to the complaint files, as well as to the remaining responsive information.

Next, we note that portions of the information at issue are subject to section 552.022 of the Government Code. Section 552.022 makes certain information public, unless it is expressly confidential under other law. *See* Gov't Code § 552.022(a). One category of public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108." Gov't Code § 552.022(a)(1). The submitted information which you have labeled as closed case files constitutes completed investigations made of, for, or by the department. Thus, this information is subject to section 552.022(a)(1) and must be released, unless it is confidential under "other law" or is excepted from disclosure under section 552.108. Although the department claims that these documents, or portions thereof, are excepted from disclosure pursuant to sections 552.103, 552.107 and 552.111 of the Government Code, we note that these exceptions are discretionary exceptions under the Act and, as such, do not constitute "other law" that makes information confidential.<sup>3</sup> Accordingly, we conclude that the

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<sup>3</sup>Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 551 (1990) (statutory predecessor to section 552.103 serves only to protect governmental body's position in litigation and does not itself make information confidential), 522 at 4 (1989) (discretionary exceptions in general), 473 (1987) (governmental body may waive section 552.111). Discretionary exceptions, therefore, do not constitute "other law" that makes information confidential.

department may not withhold any portion of these documents pursuant to sections 552.103, 552.107 or 552.111 of the Government Code. We note, however, that the Texas Supreme Court recently held that “[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are ‘other law’ within the meaning of section 552.022.” *See In re City of Georgetown*, 53 S.W.3d 328, 336 (Tex. 2001). Therefore, we will determine whether any portion of this information is confidential under Rule 503 of the Texas Rules of Evidence or Rule 192.5 of the Texas Rules of Civil Procedure. *See* Open Records Decision Nos. 676 at 6 (2002) (appropriate law for a claim of attorney-client privilege for section 552.022 information is Texas Rule of Evidence 503), 677 at 9 (2002) (appropriate law for a claim of attorney work product privilege for section 552.022 information is Texas Rule of Civil Procedure 192.5).

For the purpose of section 552.022, information is confidential under Rule 192.5 only to the extent the information implicates the core work product aspect of the work product privilege. Open Records Decision No. 677 at 9-10 (2002). Core work product is defined as the work product of an attorney or an attorney’s representative developed in anticipation of litigation or for trial that contains the attorney’s or the attorney’s representative’s mental impressions, opinions, conclusions, or legal theories. Tex. R. Civ. P. 192.5(a), (b)(1). Accordingly, in order to withhold attorney core work product from disclosure under Rule 192.5, a governmental body must demonstrate that the material was 1) created for trial or in anticipation of litigation and 2) consists of an attorney’s or the attorney’s representative’s mental impressions, opinions, conclusions, or legal theories. *Id.* The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. *See Nat’l Tank v. Brotherton*, 851 S.W.2d 193, 207 (Tex. 1993). A “substantial chance” of litigation does not mean a statistical probability, but rather “that litigation is more than merely an abstract possibility or unwarranted fear.” *Id.* at 204. The second prong of the work product test requires the governmental body to show that the documents at issue contains the attorney’s or the attorney’s representative’s mental impressions, opinions, conclusions, or legal theories. Tex. R. Civ. P. 192.5(b)(1). A document containing core work product information that meets both prongs of the work product test is confidential under Rule 192.5 provided the information does not fall within the purview of the exceptions to the privilege enumerated in Rule 192.5(c). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.–Houston [14th Dist.] 1993, no writ).

Based on our review of your arguments, the Affidavit of Doug Danzeiser you have submitted to this office, and the section 552.022 information at issue, we conclude that the department may withhold the portions of the information we have marked in the closed case files as core work product under Rule 192.5. For the remaining information for which the department claims Rule 192.5, we find that you have failed to demonstrate that the information is the

work product of an attorney or an attorney's representative developed in anticipation of litigation or that the information contains the attorney's or the attorney's representative's mental impressions, opinions, conclusions or legal theories. For this information, as well as for the remaining submitted information, we address your other claims.

As we noted above, the Texas Supreme Court has also determined that Rule 503 of the Texas Rules of Evidence is "other law" within the meaning of section 552.022. *In re City of Georgetown*, 52 S.W.3d at 336. Rule 503(b)(1) provides:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

(A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;

(B) between the lawyer and the lawyer's representative;

(C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;

(D) between representatives of the client or between the client and a representative of the client; or

(E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503. A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *See id.* 503(a)(5).

Accordingly, in order to withhold attorney-client privileged information from disclosure under Rule 503, a governmental body must 1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; 2) identify the parties involved in the communication; and 3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. *See* Open Records Decision No. 676 (2002). Upon a demonstration of all three factors, the entire communication is confidential under Rule 503 provided the client has not waived the privilege or the communication does not fall within the purview of the exceptions to the privilege enumerated in Rule 503(d). *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996) (privilege extends to entire communication, including facts contained therein); *In re Valero*

*Energy Corp.*, 973 S.W.2d 453, 4527 (Tex. App.–Houston [14th Dist.] 1998, no pet.) (Privilege attaches to complete communication, including factual information).

You advise this office that the closed case files contain communications between department attorneys and representatives of the department. Additionally, you advise us that some complaints are initially handled in the department's consumer protection division and then transferred to the legal and compliance division, and that the consumer protection staff and various department staff may assist the attorneys in the legal and compliance division with expertise in their area of insurance matters. To assist us in determining the identities of the parties who shared the communications, you have included a list of the names and positions of department staff. Based on our review of your arguments and the remaining information that you have labeled as closed case files, we find that Rule 503 is applicable to some of this information. Accordingly, we conclude that the department may withhold the portions of this information, which we have marked, pursuant to Rule 503 of the Texas Rules of Evidence. For the remaining information for which the department claims Rule 503, we find that you have failed to demonstrate that the information is a communication transmitted between privileged parties. Further, you have failed to identify the parties involved in the communication, show that the communication is confidential by explaining that it was not intended to be disclosed to third persons or show that it was made in furtherance of the rendition of professional legal services to the client.

Next, we address the department's claims under section 552.101 of the Government Code. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You argue that a portion of the requested information is confidential under article 21.07, section 6B of the Insurance Code, which provides:

(a) Each insurance carrier or agent shall, on termination of the appointment of an agent for cause, immediately file with the department a statement of the facts relating to the termination of the appointment and the date and cause of the termination. On receipt of the statement the department shall record the termination of the appointment of that agent to represent the insurance carrier in this state.

(b) A document, record, statement, or other information required to be made or disclosed to the department under this section is a privileged and confidential communication and is not admissible in evidence in any court action or proceeding except under a subpoena issued by a court of record.

Ins. Code art. 21.07, § 6B(a), (b). Based on your representations and our review of the information you have labeled "Cancellation for Cause," we understand that this particular information is information required to be disclosed to the department under section 6B of article 21.07. Therefore, the cancellation for cause information is confidential under

section 6B(b) of article 21.07 and must be withheld from disclosure under section 552.101 of the Government Code.

You also claim that medical records are excepted under section 552.101. The Medical Practice Act ("MPA"), section 159.002(b) of the Occupations Code, provides the following:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). Medical records must be released upon the patient's signed, written consent, provided that the consent specifies (1) the information to be covered by the release, (2) reasons or purposes for the release, and (3) the person to whom the information is to be released. Occ. Code §§ 159.004, .005. Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). *See* Occ. Code §§ 159.002, .004; Open Records Decision Nos. 598 (1991), 546 (1990) (because hospital treatment is routinely conducted under supervision of physicians, documents relating to diagnosis and treatment during hospital stay would constitute protected MPA records). You have marked information that we agree may only be released in accordance with the MPA.

You also claim that a social security number of a licensee, which you have marked, is excepted from disclosure. Section 58.001 of the Occupations Code provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Occ. Code § 58.001.<sup>4</sup> You indicate that the commission obtained the permittee's social security number in connection with the issuance of a professional license. Accordingly, we find that the permittee's social security number is confidential under section 58.001 of the Occupations Code and thus must be withheld from disclosure under section 552.101 of the Government Code.

Section 552.101 also encompasses the common law right to privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)), personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have marked information that is protected by common law privacy, and which therefore must be withheld under section 552.101 of the Government Code.

Additionally, you claim that a copy of a driver's license is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

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<sup>4</sup>As of the date of this letter ruling, two different sections of the Occupations Code are denominated as section 58.001. The section relating to "[t]he social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession" was renumbered from section 56.001 of the Occupations Code to section 58.001 of the Occupations Code by the Act of May 20, 2003, 78th Leg., R.S., ch. 1275, § 2(112), 2003 Tex. Gen. Laws 4140, 4146.



You must withhold the copy of the Texas driver's license that you have marked under section 552.130.

The submitted information also contains bank account numbers. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. The department must, therefore, withhold the bank account numbers you have marked as well as those we have marked under section 552.136.

Next, we address your claim under section 552.137. As amended by the 78<sup>th</sup> Legislature, this section provides as follows:

- (a) Except as otherwise provided by this section, an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.
- (c) Subsection (a) does not apply to an e-mail address:
  - (1) provided to a governmental body by a person who has a contractual relationship with the governmental body or by the contractor's agent;
  - (2) provided to a governmental body by a vendor who seeks to contract with the governmental body or by the vendor's agent;
  - (3) contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to a governmental body in the course of negotiating the terms of a contract or potential contract; or
  - (4) provided to a governmental body on a letterhead, coversheet, printed document, or other document made available to the public.
- (d) Subsection (a) does not prevent a governmental body from disclosing an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code § 552.137. Section 552.137 excepts from public disclosure certain e-mail addresses of members of the public that are provided for the purpose of communicating electronically with a governmental body, unless the individual to whom the e-mail address belongs has affirmatively consented to its public disclosure. Section 552.137 is not applicable to the types of e-mail addresses listed in section 552.137(c). Likewise, this section is not applicable to an institutional e-mail address, an Internet website address, or an e-mail address that a governmental entity maintains for one of its officials or employees.

You have marked a number of e-mail addresses. We agree that these e-mail addresses are confidential under section 552.137(a). Therefore, unless the individuals to whom the e-mail addresses belong have affirmatively consented to their public disclosure, the department must withhold them under section 552.137.

You claim that the remaining submitted information is excepted from disclosure pursuant to section 552.103 of the Government Code. Section 552.103 provides as follows:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The department has the burden of providing relevant facts and documents to show that section 552.103 is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated on the date that the governmental body receives the request and (2) the information at issue is related to that litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.--Austin 1997, no pet.); *see also Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The department must meet both prongs of this test for information to be excepted under 552.103.

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an

attorney for a potential opposing party.<sup>5</sup> *See* Open Records Decision No. 555 (1990); *see also* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982).

You state that multiple case files have been opened in the enforcement section of the legal and compliance division of the department in order to initiate possible administrative actions against Mr. Robert D. Neal, American Benefit Plans, and various associated individuals or entities for alleged violations of the Texas Insurance Code. Furthermore, you state that it is the intent of the department to continue to pursue administrative litigation against Robert D. Neal and various associated individuals and entities. Based on our review of your representations, the affidavit of Doug Danzeiser that you have submitted, and the remaining submitted information, we agree that litigation involving the department was reasonably anticipated on the date that it received this request for information. Furthermore, based on our review of the documents, we agree that they are related to the anticipated litigation. Accordingly, we conclude that the department may withhold the entirety of the information it seeks to withhold pursuant to section 552.103 of the Government Code.<sup>6</sup>

Generally, however, once information has been obtained by all parties to anticipated litigation through discovery or otherwise, no section 552.103 interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing parties in such anticipated litigation is not excepted from disclosure under section 552.103. We note that you represent that none of this information has been viewed by all parties to anticipated litigation. Further, the applicability of section 552.103 to this information ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, to the extent necessary, the department may rely on our previous determinations issued to the department in Open Records Letter Nos. 2001-4777 (2001) and 95-1536 (1995) with respect to information addressed in those rulings. The department may again rely on Open Records Letter No. 2000-4653 (2000) as a previous determination for information that is confidential under section 552.101 with regard to the request for information concerning

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<sup>5</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

<sup>6</sup> Because we base our ruling on the above-noted exceptions to disclosure, we need not address your 552.136 claim for the information that is excepted from disclosure under section 552.103.

complaints received by or disciplinary actions taken against Mr. Neal by the department prior to the date of that letter ruling. The department may withhold the information we have marked in the closed case files under Rule 192.5 of the Texas Rules of Civil Procedure and Rule 503 of the Texas Rules of Evidence. The department must withhold the information you have marked as "Cancellation for Cause" under section 552.101 of the Government Code in conjunction with article 21.07 of the Insurance Code. The medical record information must be released only in accordance with the MPA. The licensee's social security number you have marked must be withheld under section 552.101 in conjunction with section 58.001 of the Occupations Code. The department must withhold the information we have marked under section 552.101 in conjunction with common law privacy. The department must withhold the driver's license information under section 552.130, the checking account numbers under section 552.136, and the e-mail addresses under section 552.137, unless the individuals to whom the e-mail addresses belong have affirmatively consented to their public disclosure. The department may withhold the entirety of the information it seeks to withhold pursuant to section 552.103 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

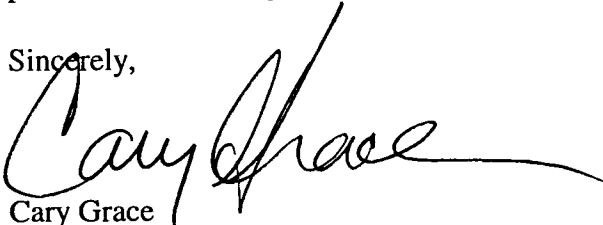
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Cary Grace", with a long horizontal flourish extending to the right.

Cary Grace  
Assistant Attorney General  
Open Records Division

ECG/lmt

Ref: ID#199231

Enc. Submitted documents

c: Mr. Robert C. Rice  
Rice and Associates  
1010 Lamar, Suite 1010  
Houston, Texas 77002  
(w/o enclosures)